

causing the overpayment. The Board may recover the remainder of the overpayment by setoff against the widow's annuity. However, it may forego recovery under this section if such recovery would be contrary to the purpose of the Railroad Retirement Act as defined in § 255.12. Since this is not a waiver of the overpayment, the Board is free to recover the overpayment from the widow at a later date, for example, if an accrual of benefits should become payable, or if it determines that such recovery would not be against the purpose of the Railroad Retirement Act.

Example (2): A representative payee for a retarded child, through her own fault, causes an overpayment in the child's annuity. The overpaid amounts were used for the benefit of the child. The representative payee dies before the overpayment can be recovered from her and she leaves no estate. The Board may not waive the remainder of the overpayment with respect to the child since for purposes of waiver the representative payee is considered the overpaid individual (see § 255.18) and the overpaid individual was at fault. However, if the child was not at fault in causing the overpayment and recovery would be contrary to the purpose of the Railroad Retirement Act as defined in § 255.12, then the Board may forego recovery of the overpayment from the child's annuity under this section.

§ 255.18 Recovery of overpayments from a representative payee.

(a) *Joint liability.* In general, if an overpayment is made to an individual receiving benefits as a representative payee (see part 266 of this chapter) the Board may recover the overpayment from either the representative payee or the beneficiary, or both. If the beneficiary is currently receiving benefits, either in his or her own right or through a representative payee, the Board will generally propose to recover the overpayment by setoff against those benefits as provided for in § 255.6 of this part. If the beneficiary is not currently receiving benefits but the representative payee is receiving benefits, then the Board will generally propose to recover the overpayment by setoff against those benefits.

(b) *Waiver of overpayments.* For purposes of § 255.10 (Waiver of recovery), if it is determined that the representative payee was at fault in causing the overpayment there may be no waiver of the overpayment either as to the representative payee or the beneficiary. However, if the beneficiary was not at fault in causing the overpayment he or she may be eligible for administrative relief from recovery under § 255.17.

(c) This section may be illustrated by the following examples:

Example (1): M is receiving a child's annuity as a representative payee for her disabled son, S. With M's knowledge S

marries. Although both M and S know that marriage terminates the child's annuity, neither of them informs the Board of this event. Both M and S are liable for any overpayment caused. Wavier is not available since M would be considered at fault in causing the overpayment. Administrative relief from recovery is not available to S since he would also be considered at fault.

Example (2): R is a representative payee for B, who resides in a skilled-care facility. R is found to be at fault in causing an overpayment of benefits to B. The Board may recover the overpayment from either R or B. Waiver is not available because R was at fault in causing the overpayment. However, if B was not at fault in causing the overpayment he or she may be entitled to administrative relief from recovery under § 255.17.

§ 255.19 Compromise of overpayments.

(a) This section sets forth the principal standards which the Board applies in exercising its authority under 31 U.S.C. 3711 to compromise an overpayment. In addition, the Board may compromise an overpayment under the Federal Claims Collection Standards set forth in 4 CFR part 103.

(b) An overpayment may be compromised only if it is in the best interest of the agency. Circumstances and factors to be considered are:

(1) The overpayment cannot be collected because of the overpaid individual's inability to pay the full amount of the overpayment within a reasonable time;

(2) The overpaid individual refuses to pay the overpayment in full and it appears that enforced collection procedures will take an inordinate amount of time or that the cost of collecting does not justify the enforced collection of the full amount; or

(3) There is doubt that the Board could prove its case in court for the full amount claimed because of a bona fide dispute as to the facts or because of the legal issues involved.

§ 255.20 Suspension or termination of the collection of overpayments.

This section sets forth the principal standards which the Board applies in approving the suspension or termination of the collection of an overpayment. In addition the Board may suspend or terminate collection under the Federal Claims Collection Standards set forth in 4 CFR part 104.

(a) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe future collection action may be productive or collection may be effected by offset in the near future.

(b) Collection action may be terminated when:

(1) The debtor is unable to make any substantial payment;

(2) The debtor cannot be located and offset is too remote to justify retention of the claim;

(3) The cost of collection action will exceed the amount recoverable; or

(4) The claim is legally without merit or cannot be substantiated by the evidence.

Dated: December 20, 1995.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary of the Board.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

Federal Acquisition Regulation; Contracting by Negotiations; FAR Part 15 Rewrite

AGENCIES: Department of Defense, General Services Administration, and National Aeronautics and Space Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Comments are solicited from both government and industry personnel on how FAR Part 15 can be rewritten to better support contracting by negotiation. The Director of Defense Procurement, in concert with the Federal Acquisition Regulatory Council, is sponsoring an initiative to rewrite Federal Acquisition Regulation (FAR) Part 15, Contracting by Negotiation. The goal is to make Part 15 easier to understand and to eliminate policies, procedures, or requirements that impose unnecessary burdens on contractors or contracting officers. Regulatory requirements that are not required by statute, required to ensure adequately standardized government business practices, or required to protect the public interest will be considered for elimination. Innovative means of simplifying the procurement process and enhancing its efficiency will be considered for incorporation into the regulation.

Comments may be submitted in two formats: (1) By letter to the address below, or (2) by electronic response on the Acquisition Reform Network's FAR Part 15 Rewrite Forum located on the

Internet at <http://www-far.npr.gov>. All comments received will be posted in the Acquisition Reform Network's FAR Part 15 Rewrite Forum.

DATES: Comments are due on or before January 16, 1996.

ADDRESSES: Send comments to the Part 15 Rewrite Committee Chair, Ms. Melissa Rider, DAR Council, Attn: IMD 3D139, PDUSD(A&T)DP/DAR, 3062 Defense Pentagon, Washington, D.C. 20301-3062.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, telephone (703) 602-0131. FAX (703) 602-0350.

SUPPLEMENTARY INFORMATION: An interagency team has been established to rewrite FAR Part 15. The team members are drawn from the Department of Defense, civilian agencies, and the Office of Federal Procurement Policy. The team chair is Ms. Melissa Rider, with the Department of Defense. The team vice chair is Ms. Frances Sullivan, with the National Aeronautics and Space Agency (NASA).

The team is soliciting comments on recommended changes to Part 15. The following topics have already been raised by the Administrator, Office of Federal Procurement Policy, as potential areas of interest. Comments are requested on these topics, and any other ideas interested parties may offer.

1. *Use of Shall:* In what way do you think Part 15 is overly prescriptive or overly permissive? We would appreciate your comments on this issue.

2(a). *Government-Industry Communications; Draft Solicitations:* The team is considering expanding the use of draft RFPs. We would appreciate your input regarding the positive or negative impacts of using draft RFPs and any other comments you may have on the subject.

2(b). *Government-Industry Communications; Discussions:* Within the confines of applicable law, the team is considering expanding the nature, scope, and timing of discussions held during the course of a procurement. We would appreciate your comments regarding the pros and cons of changing what constitutes discussions.

2(c). *Government-Industry Communications; Oral Presentations:* FAR 15.402(f) provides for oral solicitations in certain circumstances, but makes no provisions for oral circumstances, but makes no provisions for oral presentations. The team is considering adding guidance on the use of oral presentations. The team would appreciate your comments regarding the use of oral presentations, including experiences (good and bad) your organization has had with their use.

3. *Commercial Items:* FAR 15.4, Solicitations and Receipt of Proposals and Quotations, and FAR 15.6, Source Selection, do not apply to acquisitions made using simplified acquisition procedures. We would appreciate your comments regarding whether commercial items should also be exempted from any of Part 15?

4. *Source Selection:* The team would appreciate your comments on how the Part 15 coverage of greatest value contracting can be enhanced.

5(a). *Competitive Range; No Cost Proposal:* Current coverage at FAR 15.609(a) requires the contracting officer to determine the competitive range "on the basis of cost or price and other factors." It has been suggested that it would be better for both the Government and the offeror to determine the competitive range without requiring a cost proposal. The Contracting Officer would still be able to get certain cost information (e.g., labor rates, past performance on cost control, etc.) to help determine which offerors are not in the running based on cost, but would not get a complete cost proposal prior to determining the competitive range. The team solicits your comments on benefits or disadvantages of deleting the requirement to consider cost in making the initial competitive range determination.

5(b). *Competitive Range; When there is doubt:* The team directs your attention to FAR Case number 95-008, which was published as a proposed rule in the Federal Register on November 6, 1995 (60 FR 56035). You may provide comments on the proposed rule, which deletes the statement that a proposal should be included in the competitive range for the purpose of conducting discussions, if there is doubt as to whether the proposal is in the competitive range, through the GSA case manager noted in the proposed rule. The public comment period for the proposed rule ends on January 5, 1996.

5(c). *Competitive Range; Reasonable Chance:* The team solicits your comments on the benefits or disadvantages of changing the standard for inclusion in the competitive range.

5(d). *Competitive Range; Two-phase Acquisitions:* In using a two-phase process, the agency would solicit information in the first phase regarding an offeror's capability to perform the contract. The offeror would not prepare a detailed cost or technical proposal in the first phase. Based on an offeror's capabilities, it would be invited to the second phase wherein the agency would ask for detailed technical proposals and cost information. Several agencies are

already considering similar methods. If you have had experience using similar methods or would like to share your opinions on the topic, we would appreciate your comments.

6(a). *Contract Pricing; Subcontracts:* The current coverage at FAR 15.806-1(d) states that the prices of negotiated subcontractors should "in no instance * * * be accepted as the sole evidence that [such] prices are fair and reasonable." It has been suggested that this language be removed. We would appreciate any comments you want to share on the subject.

6(b). *Contract Pricing; TINA:* If there are additional revisions you believe would further the efforts of the TINA drafting team, please let us know. The team would also like to solicit your opinions regarding the field pricing support coverage at FAR 15.805-5.

7. *Agency supplementation:* The public's views are sought on the extent to which agency supplementation of FAR Part 15, other than internal agency procedures, should be limited.

8. *Evolving (changes to) solicitations on commercial item acquisitions:* Under traditional procurement thinking, contracting officials are expected to have completed intensive needs and product analyses before they initiate the formal competitive procurement process, which requires substantial acquisition leadtimes. The public's views are sought regarding whether and how the FAR provisions for making changes to evaluation factors and contract requirements in the acquisition of commercial items should be modified to ensure that agencies may more efficiently and effectively match their needs with commercially available technologies and products.

9. *Open negotiation techniques:* In the commercial marketplace, competitions may involve techniques in which the buyer releases or otherwise makes available the bid prices of all vendors without revealing competitive secrets (e.g., cost breakdowns, vendor name, etc.). These sorts of auctioning techniques are currently prohibited in the FAR. The public's view are sought on whether such prohibitions can and should be narrowed or eliminated.

10. *Use of source selection standards:* Currently, agencies develop evaluation standards to establish a uniform baseline to determine how well an offeror's proposal satisfies the source selection evaluation criteria. Evaluation criteria and standards can be difficult to determine, particularly with respect to commercial items and in cases where the Government's requirements are stated in terms of performance objectives rather than detailed

specifications. In such cases, the offeror's lack of knowledge of the standards may hinder its ability to know the basis upon which the offer will be evaluated.

The public's views are sought regarding what types of acquisitions, if any, might warrant the release of evaluation standards as part of the solicitation. The public's views are also sought on whether there are circumstances in which proposals should be evaluated against one another as opposed to a set of standards.

11. *Unsolicited proposals:* The public's views are sought on whether the FAR provisions addressing the handling of unsolicited proposals discourage industry from investing independent research and development funds in unique and innovative ideas and, therefore, should be modified.

Linda W. Neilson,

Deputy Director, Defense Acquisition Regulations Council.

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48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Foreign Product Restrictions

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to rescind most of the non-statutory foreign product restrictions in subpart 225.71.

DATES: Comment Date: Comments on the proposed rule should be submitted in writing to the address below on or before February 26, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D033 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends language in the Defense Federal Acquisition Regulation Supplement (DFARS) to

rescind most of the non-statutory foreign product restrictions in Subpart 225.71, except for the restrictions on several forging items, which are still under review.

B. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule will affect the preference for domestic manufacturers of miniature and instrument ball bearings, precision components for certain mechanical time devices, high purity silicon, high carbon ferrochrome, and certain foreign items. It is estimated that approximately 135 contractors, some of which are small businesses, will now be subject to foreign competition. An Initial Regulatory Flexibility Analysis has been prepared and may be obtained from the address stated herein. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D033 in correspondence.

C. Paperwork Reduction Act

Because many items are no longer restricted, the proposed rule will result in a reduction of the paperwork burden associated with DFARS clause 252.225-7025, Foreign Source Restrictions (OMB Control No. 0704-0229), which requires that contractors maintain records showing compliance with the restrictions until three years after final payment and make records available upon request of the Contracting Officer. The rule does not impose any additional information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.
Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225 and 252 are proposed to be amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 225.7102 is revised to read as follows:

225.7102 Forgings policy.

DoD requirements for the following forging items, whether as end items or components, shall be acquired from U.S. or Canadian sources to the maximum extent practicable—

| Items | Categories |
|-------------------------------|--|
| Ship propulsion shafts | Excludes service and landing craft shafts. |
| Periscope tubes | All. |
| Ring forgings for bull gears. | All greater than 120 inches in diameter. |

3. Section 225.7103 is revised to read as follows:

225.7103 Forgings exceptions.

The policy in 225.7102 does not apply to acquisitions—

(a) When using simplified acquisition procedures, unless the restricted item is the end item being purchased;

(b) Overseas for overseas use; or

(c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity). The restriction to domestic sources does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

4. Section 225.7104 is revised to read as follows:

225.7104 Forgings waivers.

Upon request from a prime contractor, the contracting officer may waive the requirement for domestic manufacture of the items covered by the policy in 225.7102.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.225-7105, is revised to read as follows:

252.225-7025 Foreign Source Restrictions.

As prescribed in 225.7105, use the following clause:

Foreign Source Restrictions (XXX XXXX)

(a) *Definitions.* As used in this clause—

(1) "Domestic manufacture" means manufactured in the United States or Canada if the Canadian firm—

(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

(ii) Agrees to become (upon receiving a contract/order) a planned producer under